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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/728,096

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Ray Smith

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 08/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/728,096

Applicant(s)

SMITH, RAY

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
4a) Of the above claim(s) 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-21 and 23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-23 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1-3-05</u> | 6) <input type="checkbox"/> Other: ____ |

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Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-21 and 23, drawn to a storage device, classified in class 220, subclass 9.2.
- II. Claim 22, drawn to a method of use, classified in class 29, subclass 428.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and ii are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case, the product can be used in a different process which doesn't require the rotating of the first and second frames because the device can be used in either a deployed (erected) configuration only or a collapsed configuration only neither requiring rotation.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Ed Weisz on July 20, 2006 a provisional election was made with traverse to prosecute the invention of the storage device, claims 1-21 and 23. Affirmation of this election must be made by applicant in replying to this Office action. Claim 22 has been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-6, 8-10, 12 and 14-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 recites the limitation "the frame means" in lines 1 and 2. There is insufficient antecedent basis for this limitation in the claim. Although first and second frames have been claimed, no "means for framing" or "frame means" had been previously claimed. Claims 3-5, 8-10, 12, 14-18 are similarly indefinite. Also, it can't be determined which of the two frame means is being referred to.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 7, 13-17, 21 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Thrasher et al. (Thrasher).

Thrasher discloses a storage device comprising: a first frame (components 1, 2, 12) and a second frame (3, 4, 12) and supports 9, 10, 13 and sheet material (receptacle, bag or sack 26).

Re claim 2, the central axis is located at 8 in Fig. 2.

Re claim 7, the ends of the support members 9, 10 are rivets 8, the rivets are each located within an aperture which is considered a pocket.

Re claim 14, when the device shown in Fig. 1 lies flat on the front or first frame (1, 2, 12) the first frame is the base and the second frame is the top.

Re claim 17, the sheet material moves with the frame means by being inserted within the frame so that it moves with the frame when the frame is collapsed or by being placed outside the frame means so that it moves with the frame when the frame is expanded.

Re claim 21, the rotation of the frame members causes a twisting action on the support members.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 13, 14, 16, 17, 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ziglar in view of Meyering.

Ziglar discloses a storage device comprising a first base panel and a second top frame, support members (each member comprising components 5 and 7), the support members are substantially straight since the majority of the support comprises component 5, a rigid and straight component, sheet material depends between the first panel and the second frame, the user manipulation including rotation of the second frame with respect to the first panel is capable because the supports on one side can be pivoted inwardly before the supports on an opposite side, which would allow the one side to drop before the opposite side, this is rotation. Ziglar discloses the invention except for the first frame. Meyering discloses a frame at the base. It would have been obvious to modify the base panel to be a frame to save weight to lower shipping and material costs.

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Re claim 5, the flexible material of the support is in elastic hinge means 7, the support are resilient as stated in claim 6. Re claim 7, the elastic hinge means 7 of the supports at the ends of the support members are located in channels or pockets on the device as shown in Fig. 5 and 6.

Claims 1-4, 7, 11-17, 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang ('569) in view of Meyering.

Wang ('569) discloses a storage device comprising a first base panel 4 and a second top frame (four horizontal rods 2), support members (vertical rods 3), sheet material depends between the first panel and the second frame, the user manipulation including rotation of the second frame with respect to the first panel is shown when comparing Fig. 2, 3 and 4 in progression from erected to partially collapsed to fully collapsed. Wang ('569) discloses the invention except for the first frame. Meyering discloses a frame at the base. It would have been obvious to modify the base panel to be a frame to save weight to lower shipping and material costs.

Re claims 7, 11 and 12, the rods are wrapped in the sheet material so that the supports are located in channels or pockets.

Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang ('569) in view of Meyering as applied to claim 1 above, and further in view of Wang ('045).

The combination discloses the invention except for the subframe members which move independently of the first and second frames. Wang ('045) teaches a three frame, sideways collapsible configuration, the three frames define two collapsible sections which are collapsible independently from each other. It would have been obvious to add a third frame and a second


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section to provide another compartment and increased storage volume for the collapsing storage device.

Claims 8-10 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc